Robert C. Newark, III
Bar ID 24040097
Newark Law Office
1341 W. Mockingbird Ln Ste. 600W
Dallas, TX 75247
Telephone: (866) 230-7236
Fax: (888) 316-3309
office@newarkfirm.com

Attorney For Creditor Capital One Auto Finance, a division of Capital One, N.A.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (ABILENE)

| § | Case No. 20-10055-RLJ13 |
|---|--|
| § | (Chapter 13) |
| § | |
| | OBJECTION TO CONFIRMATION |
| | CHAPTER 13 PLAN |
| | |
| | Judge: Robert L. Jones |
| | Ctrm: 306 |
| | |
| | |
| | |
| 0 | |
| | <i>•••••••••••••••••••••••••••••••••••••</i> |

CAPITAL ONE AUTO FINANCE, A DIVISION OF CAPITAL ONE, N.A.'S OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN CONCERNING THE TREATMENT OF CLAIM SECURED BY A 2017 VOLKSWAGEN PASSAT SEDAN 4D R-LINE 14 TURBO

COMES NOW, Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"), to object to confirmation of Chapter 13 Plan ("Plan") filed by Maria Alicia Kuykendall (hereafter referred to as "Debtor") and states the following:

BACKGROUND

- 1. On March 31, 2020, Debtor filed a voluntary bankruptcy petition under Chapter 13 of Title 11 of the United States Code ("Petition").
- 2. Creditor holds a security interest in the vehicle identified as a 2017 VOLKSWAGEN Passat Sedan 4D R-Line I4 Turbo, VIN # 1VWDT7A38HC072811 (the "Collateral"). Copies of the installment sales contract (the "Contract") and evidence of title are attached as Exhibits "A" and "B," respectively.

3. Creditor timely filed a Proof of Claim in the amount of \$12,306.64 on May 05, 2020

("POC"). See Claim #6. The POC has not been objected to by Debtor or any other party.

4. The Collateral was acquired by Debtor for personal use.

5. The balance owed under the Contract at the time of Petition is \$12,306.64.

6. The Chapter 13 Plan filed proposes to pay Creditor's claim in the amount of \$12,306.64 at

0.00% interest over the term of 60 months.

GROUNDS FOR OBJECTION

Creditor objects to the Plan for the following reasons:

7. The Plan fails to pay the applicable prime plus interest rate. A debtor must pay the present

value of the secured claim by paying the creditor a discount rate of interest as measured by the formula

rate expressed by the United States Supreme Court in Till v. SCS Credit Corp., 541 U.S. 465 (2004).

See also Drive Fin. Servs., L.P. v. Jordan, 521 F.3d 343 (5th Cir. 2008) (applying prime plus rate to

vehicle lender's claim). The current prime rate of interest is 3.250%. To the extent the Plan proposes to

pay less than the prime interest rate plus 1.00%, Creditor objects to the confirmation of the Plan.

WHEREFORE, Creditor asks the Court to deny confirmation of the Chapter 13 Plan, and dismiss

the Chapter 13 case, or, in the alternative, convert the case under Chapter 7 of the Bankruptcy Code.

Creditor asks for such other and further relief to which it is justly entitled.

Dated: May 08, 2020

/s/ Robert C. Newark, III

Robert C. Newark, III

Bar ID 24040097

Newark Law Office

1341 W. Mockingbird Ln, Ste. 600W

Dallas, TX 75247

Telephone: (866) 230-7236

Fax: (888) 316-3309

office@newarkfirm.com

Attorney for Capital One Auto Finance, a division of Capital One, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on May 08, 2020, a true and correct copy of the above Objection shall be served via electronic means, if available, otherwise by regular, first class mail, to:

Via CM/ECF to Counsel for Debtor:
Della J. Durham
The Law Office of Della J. Durham. P.C.
PO Box 3695
Abilene, TX 79604
Durham@DellaJDurham.com

Via CM/ECF to Chapter 13 Trustee: Robert B. Wilson 1407 Buddy Holly Ave Lubbock, TX 79401 cmccf@ch13-12westtex.org Via US Mail to Debtor: Maria Alicia Kuykendall P.o. Box 370 Roscoe, TX 79545

Via CM/ECF to US Trustee: U.S. TRUSTEE 1100 Commerce Street, Room 976 Dallas, TX 75202 ustpregion06.da.ecf@usdoj.gov

/s/ Robert C. Newark, III
Robert C. Newark, III